

AMENDED IN SENATE APRIL 6, 2015
AMENDED IN SENATE MARCH 17, 2015
AMENDED IN SENATE MARCH 11, 2015

SENATE BILL

No. 33

Introduced by Senator Hernandez

December 1, 2014

An act to amend Section 14009.5 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 33, as amended, Hernandez. Medi-Cal: estate recovery.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing federal law requires the state to seek adjustment or recovery from an individual's estate for specified medical assistance, including nursing facility services, home and community-based services, and related hospital and prescription drug services, if the individual was 55 years of age or older when he or she received the medical assistance. Existing federal law allows the state, at its own option, to seek recovery for any items or services covered under the state's Medicaid plan.

Existing state law, with certain exceptions, requires the department to claim against the estate of a decedent, or against any recipient of the property of that decedent by distribution or survival, an amount equal to the payments for Medi-Cal services received or the value of the property received by any recipient from the decedent by distribution or

survival, whichever is less. Existing law provides for certain exemptions that restrict the department from filing a claim against a decedent's property, including when there is a surviving spouse during his or her lifetime. Existing law requires the department, however, to make a claim upon the death of the surviving spouse, as prescribed. Existing law requires the department to waive its claim, in whole or in part, if it determines that enforcement of the claim would result in a substantial hardship, as specified. Existing law, which has been held invalid by existing case law, provides that the exemptions shall only apply to the proportionate share of the decedent's estate or property that passes to those recipients, by survival or distribution, who qualify for the exemptions.

This bill would instead require the department to make these claims only in specified circumstances for those health care services that the state is required to recover under federal law, and would define health care services for these purposes. The bill would limit any claims against the estate of a decedent to only the real and personal property or other assets the state is required to seek recovery from under federal law. The bill would delete the proportionate share provision and would delete the requirement that the department make a claim upon the death of the surviving spouse. The bill would require the department to waive its claim when the estate subject to recovery is a homestead of modest value, as defined. *The bill would limit the amount of interest that is entitled to accrue on a voluntary postdeath lien, as specified.* The bill would also require the department to provide a current or former beneficiary, or his or her authorized representative, upon request and free of charge, with the total amount of Medi-Cal expenses that have been paid on his or her behalf that would be recoverable under these provisions, as specified. The bill would apply the changes made by these provisions only to individuals who die on or after January 1, 2016.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (1) *Existing federal law (42 U.S.C. Sec. 1396p) requires state*
- 4 *Medicaid programs to seek reimbursement from the estates of*
- 5 *deceased Medicaid beneficiaries, or from any recipient of the*

1 *decedent's property by distribution or survival, for Medicaid paid*
2 *services received on or after 55 years of age, unless specific*
3 *exemptions or other limitations apply.*

4 *(2) Federal law requires states to collect for long-term services*
5 *and supports for individuals 55 years of age or older, and gives*
6 *states the option to collect for other health care services.*

7 *(3) Federal law permits states to collect from the surviving*
8 *spouse of a Medi-Cal beneficiary, but does not require collection*
9 *upon the passing of a spouse of a deceased Medi-Cal beneficiary.*

10 *(4) Federal law defines "estate" for purposes of estate recovery*
11 *to include all real and personal property and other assets included*
12 *within the individual's estate, as defined for purposes of state*
13 *probate law, and permits states to have a broader definition of*
14 *estate.*

15 *(5) The State Medicaid Manual allows states to establish an*
16 *undue hardship exemption from estate recovery for a homestead*
17 *of "modest value," defined as a home valued at 50 percent or less*
18 *of the average price of homes in the county where the homestead*
19 *is located as of the date of the beneficiary's death.*

20 *(6) Estate recovery is unfair to low-income individuals who*
21 *need Medi-Cal for basic health care coverage, is a deterrent to*
22 *signing individuals up for Medi-Cal, and is counter to both state*
23 *and federal efforts to enroll individuals into health care coverage.*

24 *(7) By recovering for health care services beyond what is*
25 *required by federal law, California forces low-income individuals*
26 *55 years of age or older to choose between signing up for basic*
27 *health care services and passing on their home and other limited*
28 *assets they possess to their children.*

29 *(8) California's estate recovery program undermines the idea*
30 *of Medi-Cal as a health care entitlement program by essentially*
31 *turning Medi-Cal coverage for basic medical services into a loan*
32 *program, with collection taking place at death.*

33 *(9) Estate recovery unfairly places part of the burden of*
34 *financing the cost of health care in Medi-Cal on the estates of*
35 *deceased Medi-Cal beneficiaries with limited assets.*

36 *(10) Estate recovery is inequitable as other social and health*
37 *care programs, such as tax-subsidized coverage through the*
38 *California Health Benefit Exchange, commonly referred to as*
39 *Covered California, and the broadly financed federal Medicare*
40 *program, do not have estate recovery.*

1 (11) California does not adequately inform individuals on how
2 to obtain information on the amounts that will be collected from
3 their estate, and charges individuals \$25 to find out how much
4 Medi-Cal has spent on their behalf.

5 (b) It is the intent of the Legislature, with the enactment of this
6 act, to do all of the following:

7 (1) Limit Medi-Cal estate recovery to only those services
8 required to be collected for under federal law.

9 (2) Limit the definition of “estate” to include only the real and
10 personal property and other assets required to be included within
11 the definition of “estate” under federal law.

12 (3) Require the State Department of Health Care Services to
13 implement the option in the State Medicaid Manual to waive its
14 claim, as a substantial hardship, when the estate, subject to
15 recovery, is a homestead of modest value.

16 (4) Prohibit recovery from the surviving spouse of a deceased
17 Medi-Cal beneficiary.

18 (5) Ensure that Medi-Cal beneficiaries can easily and timely
19 receive information about how much their estate will owe Medi-Cal
20 when they die.

21 ~~SECTION 1.~~

22 SEC. 2. Section 14009.5 of the Welfare and Institutions Code
23 is amended to read:

24 14009.5. (a) Notwithstanding any other provision of this
25 chapter, the department shall claim against the estate of the
26 decedent, or against any recipient of the property of that decedent
27 by distribution an amount equal to the payments for the health care
28 services received or the value of the property received by any
29 recipient from the decedent by distribution, whichever is less, only
30 in either of the following circumstances:

31 (1) Notwithstanding paragraph (2), against the real property of
32 a decedent who was an inpatient in a nursing facility in accordance
33 with Section 1396p(b)(1)(A) of Title 42 of the United States Code.

34 (2) (A) The decedent was 55 years of age or older when the
35 individual received health care services.

36 (B) The department shall not claim under this paragraph when
37 there is any of the following:

38 (i) A surviving spouse.

39 (ii) A surviving child who is under 21 years of age.

1 (iii) A surviving child who is blind or permanently and totally
2 disabled, within the meaning of Section 1614 of the federal Social
3 Security Act (42 U.S.C. Sec. 1382c).

4 (b) (1) The department shall waive its claim, in whole or in
5 part, if it determines that enforcement of the claim would result in
6 substantial hardship to other dependents, heirs, or survivors of the
7 individual against whose estate the claim exists.

8 (2) In determining the existence of substantial hardship, in
9 addition to other factors considered by the department consistent
10 with federal law and guidance, the department shall waive its claim
11 when the estate subject to recovery is a homestead of modest value.

12 (3) The department shall notify individuals of the waiver
13 provision and the opportunity for a hearing to establish that a
14 waiver should be granted.

15 (c) *If the department proposes and accepts a voluntary postdeath*
16 *lien, the voluntary postdeath lien shall accrue interest at the rate*
17 *equal to the monthly average received on investments in the Surplus*
18 *Money Investment Fund or simple interest at 7 percent per annum,*
19 *whichever is lower.*

20 (e)

21 (d) (1) The department shall provide a current or former
22 beneficiary, or his or her authorized representative designated
23 under Section 14014.5, upon request and free of charge, with the
24 total amount of Medi-Cal expenses that have been paid on behalf
25 of that beneficiary that would be recoverable under this section.

26 (2) The department shall permit a beneficiary to request the
27 information described in paragraph (1) through the Internet, by
28 telephone, by mail, in person, or through other commonly available
29 electronic means.

30 (3) The department shall conspicuously post on its Internet Web
31 site, a description of the methods by which a request under this
32 subdivision may be made, including, but not limited to, the
33 department's telephone number and any addresses that may be
34 used for this purpose. The department shall also include this
35 information in its pamphlet for the Medi-Cal Estate Recovery
36 Program and any other notices the department distributes to
37 beneficiaries regarding estate recovery.

38 (4) Upon receiving a request for the information described in
39 paragraph (1), the department shall provide the information
40 requested within 30 days after receipt of the request.

1 ~~(d)~~

2 (e) The following definitions shall govern the construction of
3 this section:

4 (1) “Decedent” means a beneficiary who has received health
5 care under this chapter or Chapter 8 (commencing with Section
6 14200) and who has died leaving property to others either through
7 distribution or survival.

8 (2) “Dependents” includes, but is not limited to, immediate
9 family or blood relatives of the decedent.

10 (3) ~~“Estate”~~ “*Estate*” means all real and personal property and
11 other assets that are required to be subject to a claim for recovery
12 pursuant to Section 1396p(b)(4)(A) of Title 42 of the United States
13 Code. “Estate” shall not include any other real and personal
14 property or other assets in which the individual had any legal title
15 or interest at the time of death, to the extent of that interest,
16 including any assets conveyed to a survivor, heir, or assign of the
17 decedent through joint tenancy, tenancy in common, survivorship,
18 life estate, living trust, or other arrangement, consistent with
19 Section 1396p(b)(4)(B) of Title 42 of the United States Code.

20 (4) “Health care services” means only those services required
21 to be recovered under Section 1396p(b)(1)(B)(i) of Title 42 of the
22 United States Code.

23 (5) “Homestead of modest value” means a home whose fair
24 market value is 50 percent or less of the average price of homes
25 in the county where the homestead is located, as of the date of the
26 decedent’s death.

27 ~~(e)~~

28 (f) The amendments made to this section by the act that added
29 this subdivision shall apply only to individuals who die on or after
30 January 1, 2016.